



Accelerating Broadband Deployment in the 2.5 GHz Band

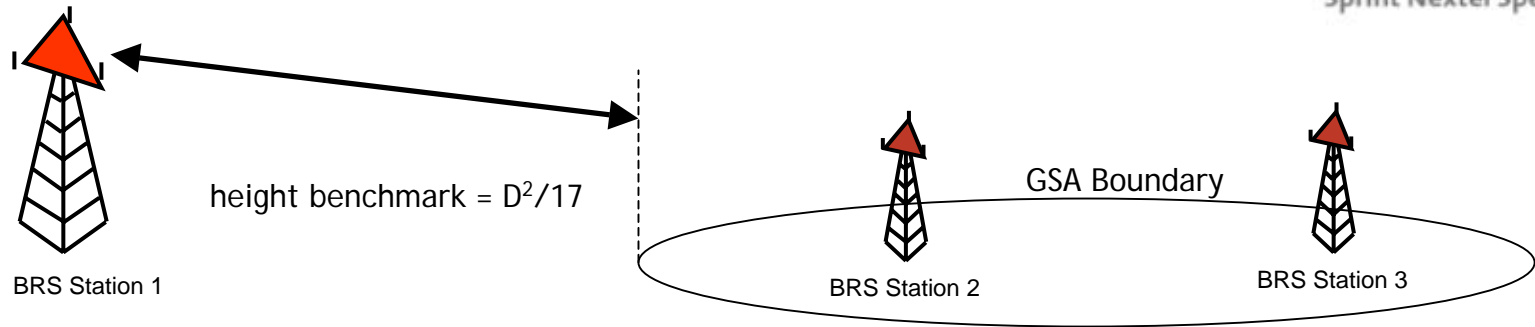
December 1, 2005

Affirm Secondary Markets Rules



- **The Commission should affirm its decision not to impose arbitrary limits on the ability of parties to negotiate lease term renewals.**
- **Increase investment.** Commercial operators need lease terms long enough to fully recoup the substantial facilities-based investment planned for the EBS spectrum.
 - o The shorter the lease term, the less any lessee can and will invest in the subject of the lease.
 - o As the Commission has held, licensees “should generally have ... license terms of sufficient length, with reasonable renewal expectancy, to encourage investment.”
- **Ensure regulatory parity.** A level playing field should exist in the highly competitive market for wireless services. EBS lessees should have the same flexibility to reach mutually agreeable contract terms as any other lessees subject to the *Secondary Markets Order*.
- **Promote EBS licensee’s educational mission.** Permitting parties to negotiate renewal terms promotes the educational purposes of EBS by minimizing costs to licensees and maximizing potential revenue.
 - o The Commission should not prevent EBS licensees from selecting the marketplace agreement that best meets their needs.
 - o EBS licensees are free not to lease, to reject renewal provisions or to negotiate renewal terms that are tailored to their individual needs.

Affirm and Strengthen Height Benchmarking Rules



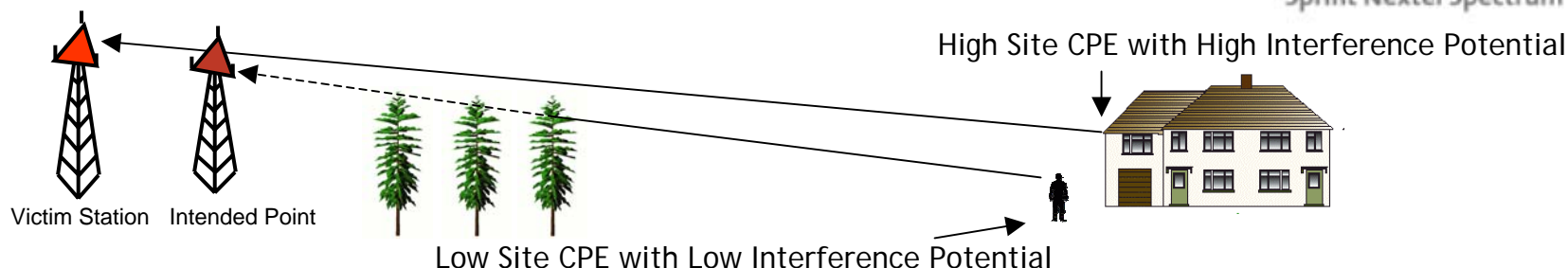
- Under the FCC's current rules, stations that exceed a height relative to other transmitters (the "height benchmark") must limit undesired signals into the other base station to prevent harmful interference from occurring.
- Information exchange among licensees is essential to the FCC's height-benchmarking requirement that prevents harmful interference.
 - The height benchmark is defined for pairs of base stations.
 - No one can determine whether or not a station meets the height benchmark unless one knows the transmitter height and coordinates of both transmitters in the equation.

Affirm and Strengthen Height Benchmarking Rules



- Height benchmarking is designed to prevent interference before it harms consumers.
- Proposals to require licensees prepare a “documented interference complaint” for adjudication by the FCC prior to remediation defeats the purpose of the requirement and imposes costs on consumers who suffer service disruption until the FCC can adjudicate the merits of the “documented interference complaint.”
- To determine the proper emission and protection level under the height benchmarking requirement, licensees should simply provide each other with the base station coordinates and heights within thirty days of a request for this information.
 - o Licensees should remain free to negotiate other emissions levels in the marketplace, but discussions cannot begin until the parties know whether or not they comply with the applicable height benchmark.
 - o Height benchmarking information is not competitively significant; however, if confidentiality is deemed a concern, licensees could be required to provide this information subject to a non-disclosure agreement.

Adopt Same Burden-Shifting Method for Emissions Masks



- Licensees that deploy CPE where it is more likely to cause interference should observe a more stringent emissions mask at the outset – not only after submitting and processing a “documented interference complaint”
 - Where interference is highly likely to occur, victim licensees should not have to document – and the FCC should not have to adjudicate – interference complaints from tens of thousands of CPE installations
- CPE with antennae located more than twenty feet above ground level have a much greater interference potential than those on the ground – essentially as high as that of a **full power base station**
 - Particularly in the 2.5 GHz band, terrain, foliage and other obstacles do not affect higher site CPE as much as lower site CPE
 - Licensees that deploy CPE on the ground where it is much less likely to cause interference can observe a more permissive emissions mask, but can be required to observe the more stringent mask in the unlikely event that interference somehow occurs
- Simple, common-sense burden shifting limits paperwork, delay, and disputes and makes the entire band plan more workable

Apply Substantial Service Rules Used for Every Other Band



- To allow licensees a fair opportunity to meet a substantial service obligation, the Commission should measure substantial service five years after the transition is complete.
 - o Measuring substantial service during or immediately after the transition would require licensees to needlessly invest in facilities that do nothing more than preserve their licenses pending completion of the transition.
 - o Rather than force licensees to redirect investment into facilities that serve as nothing more than regulatory placeholders pending transition to the new band plan, the Commission should encourage investments in facilities actually designed to serve the public.
- The Commission should also measure substantial service on a system-wide, rather than a per channel or per call sign basis.
 - o Under this Swiss-cheese licensing scheme of the 2.5 GHz band, a great many different licensees hold differently sized and often overlapping areas within a single coterminous geographic region.
 - o Focusing on the level of service provided by any individual license or channel would ignore the random, multi-source method by which BRS licensees must serve the public.

Affirm Waiver Process for MVPDs

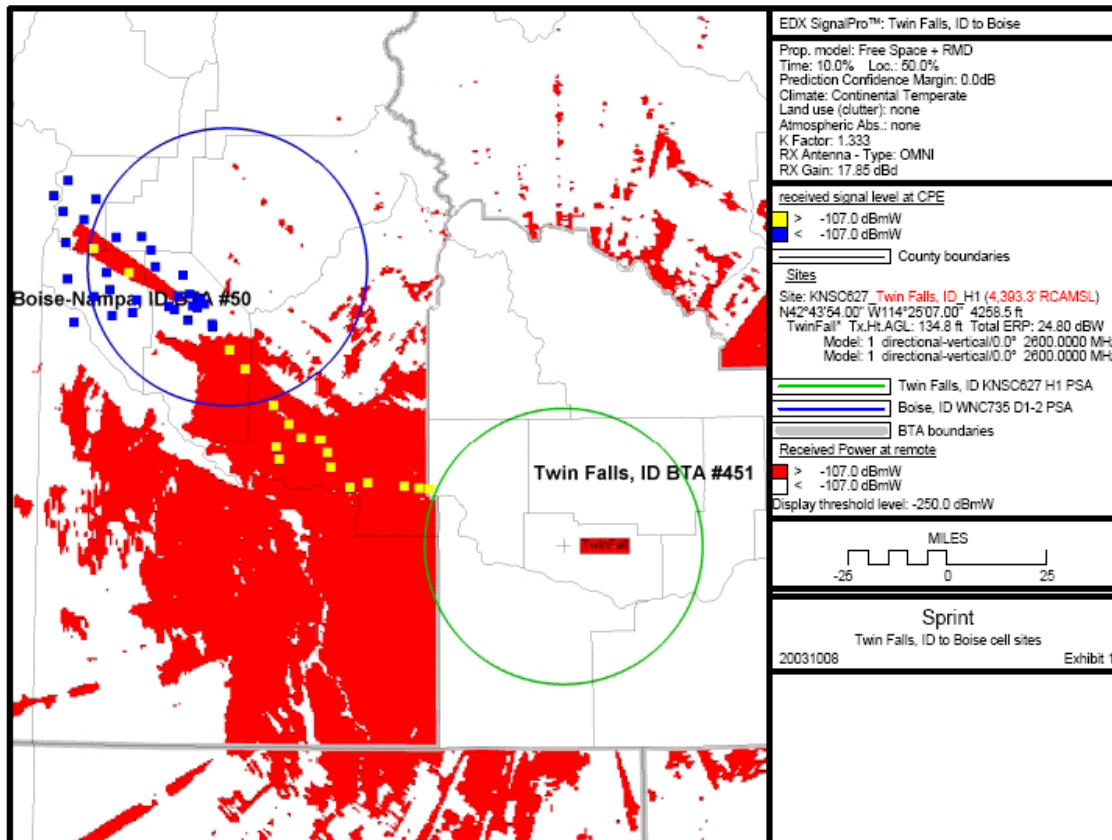


- The FCC properly held that creating new, blanket exemptions to the transition plan for legacy MVPDs would “result in interference to licensees in neighboring population centers, which would prevent these neighboring locales from receiving wireless broadband services.”
 - The purpose of BRS-EBS Realignment Order was to group like uses of the spectrum together; permitting high-site legacy MVPDs to remain frustrates the transition process and delays deployment of broadband services to the American public.
- Rather than create new exemptions and delay transition, the FCC properly chose to balance the competing needs of legacy MVPD licensees against the public interest in rapid deployment of wireless interactive multimedia services in the 2.5 GHz band.
- The Commission should affirm its decision to consider individual MVPD waiver requests only in response to unique market circumstances (e.g., WATCH-TV – Lima, OH; DHTV, Puerto Rico).

Affirm Waiver Process for MVPDs



- Granting an opt-out right creates ripple effects that will delay transition and hamstring broadband deployment



- Exempting one MVPD in the area of Twin Falls, Idaho, for example, creates potential harmful interference that could disable operations in the neighboring area of Boise.
- The less isolated the area, the worse the potential ripple effects.
- Using a waiver process rather than a blanket opt-out best allows the FCC to weigh public interest benefits of broadband deployment against highly fact-specific public interest costs.